IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1460 OF 2005

Shreedutt Tiwari (HUF) Karta. ... Petitioner
Versus.
The State of Maharashtra & anr. ... Respondents.

Shri Subhash Jha i/bny M/s.Law Global with Shri Jinesh Shah for the Petitioner.

Ms.R.M.Gadhvi, A.P.P. for Respondent No.1-State.

Shri H.Bhave i/by M/s.Bhave & Co.for the Respondent No.2.

CORAM : ABHAY S. OKA, J.

DATED : 21st June, 2005.

P.C.:

1. On the last date the Counsel appearing for the parties were made aware that this petition will be finally disposed of at admission stage.

2. The challenge in this petition is to the order dated 11th May 2005 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Mumbai, on an application made by the Respondent No.2 herein for return of the property which is more particularly described in the said Application. It is stated in the said Application that the property described therein was sealed by the Police under a panchanama and the prayer was for removing the seal and handing over possession to the Respondent No.2.

3. The learned Additional Chief Metropolitan Magistrate on the basis of the statements made by the Police before him allowed the said application.

4. On the last date when this petition was heard, apart from the other grievances, a submission was made that the order impugned has been passed without hearing the Petitioner as notice of the Application made by the Respondent No.2 was not served on the Petitioners. At that time the learned Counsel appearing for the Respondent No.2 stated that the notice of the Application was served on the Petitioner through Cuffe Parade Police Station and the notice was handed over by the Respondent No.2 to the said Police Station. Today the learned A.P.P. on instructions stated that the notice was not served on the Petitioner.

5. The learned Counsel appearing for the Petitioner submitted that the Application made by the Respondent No.2 could not have been decided on merits without effecting service of notice. He submitted that the order proceeds on the erroneous assumption that the Police have given consent for allowing the Application filed by the Respondent No.2.

6. The learned Counsel appearing for the Respondent No.2 stated that the service of notice is not effected and the Respondent No.2 cannot be blamed for that. He

submitted that as notice was not served, the Application made by the Respondent No.2 may be ordered to be reheard in a time bound programme and in the meanwhile the Officer in-charge of the Cuffe Parade Police Station be directed to restore statusquo-ante as it existed on the date of passing the impugned order.

7. In view of these submissions made by the learned Counsel appearing for the Respondent No.2, it is not necessary to adjudicate upon the merits of the controversy between the parties.

8. Hence the following order is passed:

(i) The impugned order dated 11th May 2005 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, in Notice No.53/M/2005 is quashed and set aside and the Application made by the Respondent No.2/Notice No.53/m/2005 is restored to file.

(ii) On production of authenticated copy of this order, the Officer-in-charge of the Cuffe Parade Police Station, Mumbai, will forthwith restore the statusquo-ante as it existed on 11th May 2005 in respect of

the premises in dispute.

(iii) The parties are directed to appear before the Addl.Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai on 4th July 2005. The Petitioner will file reply to the said Application on 4th July 2005.

(iv) The learned Addl.Chief Metropolitan Magistrate will decide the said application afresh as expeditiously as possible and preferably on or before 16th August 2005.

(v) All contentions of the parties on merits are kept open.

(vi) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.